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HOUSE BILL 312

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jeannette O. Wallace

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO REAL ESTATE LICENSURE; CHANGING DEFINED TERMS FOR REAL ESTATE BROKERS AND SALESPERSONS; PROVIDING FOR ADDITIONAL COMMISSION POWERS, DISCLOSURE OF LICENSEE DUTIES AND CONSENT FOR SERVICE OF PROCESS; ELIMINATING PROVISIONS FOR REFUND OF LICENSE FEES; REVISING THE QUALIFICATIONS FOR LICENSEES; CREATING THE REAL ESTATE EDUCATION AND TRAINING FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-29-1 NMSA 1978 (being Laws 1959, Chapter 226, Section 1, as amended) is amended to read:

"61-29-1. PROHIBITION.--It is unlawful for a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as [~~a broker or real estate salesperson~~] an

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1 associate broker or a qualifying broker within this state
2 without a license issued by the commission. A person who
3 engages in the business or acts in the capacity of [~~a broker or~~
4 ~~real estate salesperson~~] an associate broker or a qualifying
5 broker in this state, except as otherwise provided in Section
6 61-29-2 NMSA 1978, with or without a New Mexico license, has
7 thereby submitted to the jurisdiction of the state and to the
8 administrative jurisdiction of the commission and is subject to
9 all penalties and remedies available for a violation of any
10 provision of Chapter 61, Article 29 NMSA 1978."

11 Section 2. Section 61-29-2 NMSA 1978 (being Laws 1999,
12 Chapter 127, Section 1, as amended) is amended to read:

13 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

14 A. As used in Chapter 61, Article 29 NMSA 1978:

15 (1) "agency relationship" [~~or "brokerage~~
16 ~~relationship" means the legal or contractual relationship~~
17 ~~between a person and a brokerage in a real estate transaction~~
18 ~~subject to the jurisdiction of the commission~~] means the
19 fiduciary relationship created solely by an express written
20 agency agreement between a person and a brokerage, authorizing
21 the brokerage to act as an agent for the person according to
22 the scope of authority granted in that express written
23 agreement for real estate services subject to the jurisdiction
24 of the commission;

25 (2) "agent" means the brokerage authorized,

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1 solely by means of an express written agreement, to act as a
2 fiduciary for a person and to provide real estate services that
3 are subject to the jurisdiction of the commission; in the case
4 of an associate broker, "agent" means the person who has been
5 authorized to act by that associate broker's qualifying broker;

6 (3) "associate broker" means a person who, for
7 compensation or other valuable consideration, is associated
8 with or engaged under contract by a qualifying broker to
9 participate in an activity described in Paragraph (4) of this
10 subsection or to carry on the qualifying broker's business as a
11 whole or partial vocation;

12 [~~2~~] (4) "broker" or "qualifying broker"
13 means a person who for compensation or other consideration from
14 another:

15 (a) lists, sells or offers to sell real
16 estate; buys or offers to buy real estate; or negotiates the
17 purchase, sale or exchange of real estate or options on real
18 estate;

19 (b) leases, rents or auctions or offers
20 to lease, rent or auction real estate;

21 (c) advertises or holds himself out as
22 being engaged in the business of buying, selling, exchanging,
23 renting, leasing, auctioning or dealing with options on real
24 estate for others as a whole or partial vocation; or

25 (d) engages in the business of charging

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1 an advance fee or contracting for collection of a fee in
2 connection with a contract under which [~~he~~] the broker or
3 qualifying broker undertakes primarily to promote the sale of
4 real estate through its listing in a publication issued
5 primarily for that purpose or for the purpose of referral of
6 information concerning real estate to brokers, qualifying
7 brokers or associate brokers;

8 [~~3~~] (5) "brokerage" means a licensed
9 qualifying broker and the licensed real estate business
10 represented by the qualifying broker and its affiliated
11 licensees;

12 (6) "brokerage relationship" means the legal
13 or contractual relationship between a person and a brokerage in
14 a real estate transaction subject to the jurisdiction of the
15 commission;

16 [~~4~~] (7) "client" means a buyer, seller,
17 landlord or tenant who has entered into an express written
18 agreement with a brokerage for real estate services subject to
19 the jurisdiction of the commission;

20 [~~5~~] (8) "commission" means the New Mexico
21 real estate commission;

22 [~~6~~] (9) "customer" means a buyer, seller,
23 landlord or tenant who uses real estate services without
24 entering into an express written agreement with a brokerage
25 subject to the jurisdiction of the commission;

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1 [~~(7)~~] (10) "license" means a [~~real estate~~]
2 qualifying broker's license or [~~a real estate salesperson's~~] an
3 associate broker's license issued by the commission;

4 [~~(8)~~] (11) "licensee" means a person holding a
5 valid [~~real estate~~] qualifying broker's license or an associate
6 broker's license subject to the jurisdiction of the commission;

7 [~~(9)~~] (12) "real estate" means land,
8 improvements, leaseholds and other interests in real property
9 that are less than a fee simple ownership interest, whether
10 tangible or intangible; [~~and~~

11 [~~(10)~~] (13) "real estate salesperson" means a
12 person who, for compensation or other valuable consideration,
13 is associated with or engaged under contract by a broker to
14 participate in an activity described in [~~Subparagraphs (a)~~
15 ~~through (d) of~~] Paragraph [~~(9)~~] (4) of this subsection or to
16 carry on the broker's business as a whole or partial vocation;
17 and

18 (14) "transaction broker" means a qualifying
19 broker, associate broker or brokerage that provides real estate
20 services without entering into an agency relationship.

21 B. A single act of a person in performing or
22 attempting to perform an activity described in [~~Subparagraphs~~
23 ~~(a) through (d) of~~] Paragraph [~~(2)~~] (4) of Subsection A of this
24 section makes the person a qualifying broker. A single act of
25 a person in performing or attempting to perform an activity

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1 described in Paragraph [~~(10)~~] (3) of Subsection A of this
2 section makes the person [~~a real estate salesperson~~] an
3 associate broker.

4 C. The provisions of Chapter 61, Article 29 NMSA
5 1978 do not apply to:

6 (1) a person who as owner or lessor performs
7 any of the activities included in this section with reference
8 to property owned or leased by [~~him~~] the person, the employees
9 of the owner or lessor or the employees of a qualifying broker
10 acting on behalf of the owner or lessor, with respect to the
11 property owned or leased, if the acts are performed in the
12 regular course of or incident to the management of the property
13 and the investments, except when the sale or offering for sale
14 or the lease or offering for lease of the property constitutes
15 a subdivision containing one hundred or more parcels;

16 (2) isolated or sporadic transactions not
17 exceeding two transactions annually in which a person acts as
18 attorney-in-fact under a duly executed power of attorney
19 delivered by an owner authorizing the person to finally
20 consummate and to perform under any contract the sale, leasing
21 or exchange of real estate on behalf of the owner; and the
22 owner or attorney-in-fact has not used a power of attorney for
23 the purpose of evading the provisions of Chapter 61, Article 29
24 NMSA 1978;

25 (3) transactions in which a person acts as

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1 attorney-in-fact under a duly executed power of attorney
2 delivered by an owner related to the attorney-in-fact within
3 the fourth degree of consanguinity or closer, authorizing the
4 person to finally consummate and to perform under any contract
5 for the sale, leasing or exchange of real estate on behalf of
6 the owner;

7 (4) the services rendered by an attorney at
8 law in the performance of [~~his~~] the attorney's duties as an
9 attorney at law;

10 (5) a person acting in the capacity of a
11 receiver, trustee in bankruptcy, administrator or executor, a
12 person selling real estate pursuant to an order of any court or
13 a trustee acting under a trust agreement, deed of trust or will
14 or the regular salaried employee of a trustee;

15 (6) the activities of a salaried employee of a
16 governmental agency acting within the scope of [~~his~~]
17 employment; or

18 (7) persons who deal exclusively in mineral
19 leases or the sale or purchase of mineral rights or royalties
20 in any case in which the fee to the land or the surface rights
21 are in no way involved in the transaction."

22 Section 3. Section 61-29-4 NMSA 1978 (being Laws 1959,
23 Chapter 226, Section 3, as amended by Laws 2003, Chapter 22,
24 Section 1 and by Laws 2003, Chapter 408, Section 30) is amended
25 to read:

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1 "61-29-4. CREATION OF COMMISSION--POWERS AND DUTIES.--

2 There is created the "New Mexico real estate commission". The
3 commission shall be appointed by the governor and shall consist
4 of five members who shall have been residents of the state for
5 three consecutive years immediately prior to their appointment,
6 four of whom shall have been [~~real estate~~] associate brokers or
7 qualifying brokers licensed in New Mexico and one of whom shall
8 be a member of the public who has never been licensed as [~~a~~
9 ~~real estate broker or salesperson~~] an associate broker or a
10 qualifying broker; provided that not more than one member shall
11 be from any one county within the state. The members of the
12 commission shall serve for a period of five years or until
13 their successors are appointed and qualified. [~~Members to fill~~
14 ~~vacancies shall be appointed for an unexpired term.~~] The
15 governor may remove a member for cause. In the event of
16 vacancies, the governor shall appoint members to complete
17 unexpired terms. The commission shall possess all the powers
18 and perform all the duties prescribed by Chapter 61, Article 29
19 NMSA 1978 and as otherwise provided by law, and it is expressly
20 vested with power and authority to make and enforce rules [~~and~~
21 ~~regulations~~] to carry out the provisions of that article.
22 Prior to a final action on a proposed change or amendment to
23 the rules [~~and regulations~~] of the commission, the commission
24 may publish notice of the proposed action in its official
25 publication, distribute the publication to each active licensee

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1 and give the time and place for a public hearing on the
2 proposed changes. The hearing shall be held at least thirty
3 days prior to a proposed final action. Changes or amendments
4 to the rules shall be filed in accordance with the procedures
5 of the State Rules Act and shall become effective thirty days
6 after notification to all active licensees of the filing of the
7 changes or amendments."

8 Section 4. Section 61-29-4.1 NMSA 1978 (being Laws 1985,
9 Chapter 89, Section 1, as amended) is amended to read:

10 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING
11 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--~~[In addition to the~~
12 ~~powers and duties granted the commission under the provisions of~~
13 ~~Section 61-29-4 NMSA 1978]~~ The commission shall adopt
14 ~~[regulations]~~ rules providing for continuing ~~[educational~~
15 ~~programs that offer]~~ education courses in selling, leasing or
16 managing residential, commercial and industrial property as well
17 as courses ~~[reviewing]~~ in basic real estate law and practice,
18 ~~[The regulations shall require that every licensee except~~
19 ~~licensees who are sixty-five years of age or older and who have~~
20 ~~a minimum of twenty years' continuously licensed experience in~~
21 ~~the selling, leasing or managing of real property, as a condition~~
22 ~~of his license renewal, shall successfully complete thirty~~
23 ~~classroom hours of instruction every three years in courses~~
24 ~~approved by the commission]~~ and other courses prescribed by the
25 commission. The rules shall require that every licensee, except

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1 licensees who were exempted from the continuing education
2 requirement on January 1, 2006 by virtue of being sixty-five
3 years of age or older and having a minimum of twenty years'
4 continuous experience as a real estate licensee, as a condition
5 of license renewal, successfully complete a minimum of thirty
6 classroom hours of instruction in continuing education courses
7 prescribed by the commission. The [~~regulations shall~~] rules may
8 prescribe areas of specialty or expertise and may require that [~~a~~
9 ~~certain~~] part of the [~~thirty hours of~~] classroom instruction be
10 devoted to courses in the area of a licensee's specialty or
11 expertise."

12 Section 5. A new section of Chapter 61, Article 29 NMSA
13 1978 is enacted to read:

14 "[NEW MATERIAL] ADDITIONAL POWERS OF COMMISSION--CRIMINAL
15 BACKGROUND CHECKS.--The commission may require license
16 applicants, as a condition of licensure, to submit to criminal
17 background checks."

18 Section 6. Section 61-29-5 NMSA 1978 (being Laws 1959,
19 Chapter 226, Section 4, as amended) is amended to read:

20 "61-29-5. ORGANIZATION OF COMMISSION.--The commission
21 shall organize by electing a president, vice president and
22 secretary from its members. A majority of the commission shall
23 constitute a quorum and may exercise all powers and duties
24 devolving upon it and do all things necessary to carry into
25 effect the provisions of Chapter 61, Article 29 NMSA 1978. The

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1 secretary of the commission shall keep a record of its
2 proceedings; a register of persons licensed as [~~real estate~~
3 ~~brokers and as real estate salespersons~~] associate brokers and
4 qualifying brokers, showing the name and place of business of
5 each and the date and number of [~~his or her certificate~~] each
6 person's license; and a record of all licenses [~~or~~
7 ~~certificates~~] issued, [~~refused, removed~~] denied, suspended or
8 revoked. This record shall be open to public inspection at all
9 reasonable times."

10 Section 7. Section 61-29-6 NMSA 1978 (being Laws 1959,
11 Chapter 226, Section 5) is amended to read:

12 "61-29-6. MEETING OF THE COMMISSION.--The commission
13 shall meet at least once each quarter-year at such time and
14 place as may be designated by the commission president
15 [~~thereof~~], and special meetings may be held upon five [~~days~~]
16 days' written notice to each of the commission members by the
17 [~~president of the~~] commission president."

18 Section 8. Section 61-29-8 NMSA 1978 (being Laws 1959,
19 Chapter 226, Section 7, as amended) is amended to read:

20 "61-29-8. LICENSE FEES--DISPOSITION.--

21 A. The following fees shall be established and
22 charged by the commission and paid into the real estate
23 commission fund:

24 (1) for each examination, a fee not to exceed
25 ninety-five dollars (\$95.00);

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1 (2) for each qualifying broker's license
2 issued, a fee not to exceed two hundred seventy dollars (\$270)
3 and for each renewal thereof, a fee not to exceed two hundred
4 seventy dollars (\$270);

5 (3) for each [~~real estate salesperson's~~]
6 associate broker's license issued, a fee not to exceed two
7 hundred seventy dollars (\$270) and for each renewal thereof, a
8 fee not to exceed two hundred seventy dollars (\$270);

9 (4) subject to the provisions of Paragraph
10 (10) of this subsection, for each change of place of business
11 or change of employer or contractual associate, a transfer fee
12 not to exceed twenty dollars (\$20.00);

13 (5) for each duplicate license, where the
14 license is lost or destroyed and affidavit is made thereof, a
15 fee not to exceed twenty dollars (\$20.00);

16 (6) for each license history, a fee not to
17 exceed twenty-five dollars (\$25.00);

18 (7) for copying of documents by the
19 commission, a fee not to exceed one dollar (\$1.00) per copy;

20 (8) for each license law and rules [~~and~~
21 ~~regulations~~] booklet, a fee not to exceed ten dollars (\$10.00)
22 per booklet;

23 (9) for each hard copy or electronic list of
24 licensed [~~real estate~~] associate brokers and [~~salespersons~~]
25 qualifying brokers, a fee not to exceed twenty dollars

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1 (\$20.00);

2 (10) for each license reissued for [~~a real~~
3 ~~estate salesperson~~] an associate broker because of change of
4 address of the qualifying broker's office, death of the
5 [~~licensed~~] qualifying broker when a successor [~~licensed~~]
6 qualifying broker is replacing the decedent and the
7 [~~salesperson~~] associate broker remains in the office or because
8 of a change of name of the office or the entity of the
9 [~~licensed~~] qualifying broker, a fee in an amount not to exceed
10 twenty dollars (\$20.00) to be paid by the [~~licensed~~] qualifying
11 broker or successor qualifying broker as the case may be; but
12 if there are eleven or more affected [~~salespersons~~] associate
13 brokers in the [~~licensed~~] qualifying broker's office, the total
14 fee paid to effect reissuance of all of those licenses shall
15 not exceed two hundred dollars (\$200);

16 (11) for each application to the commission to
17 become an approved sponsor of pre-licensing and continuing
18 education courses, a fee not to exceed five hundred dollars
19 (\$500) and for each renewal thereof, a fee not to exceed five
20 hundred dollars (\$500);

21 (12) for each application to the commission to
22 become an approved instructor of pre-licensing and continuing
23 education courses, a fee not to exceed seventy dollars (\$70.00)
24 per course; and

25 (13) for each application to the commission to

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1 renew certification as a commission-approved instructor, a fee
2 not to exceed one hundred dollars (\$100).

3 B. All fees set by the commission shall be set by
4 rule and only after all requirements have been met as
5 prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or
6 amendments to the rules shall be filed in accordance with [~~the~~
7 ~~provisions of~~] the State Rules Act.

8 C. The commission shall deposit all money received
9 by it from fees in accordance with the provisions of Chapter
10 61, Article 29 NMSA 1978 with the state treasurer, who shall
11 keep that money in a separate fund to be known as the "real
12 estate commission fund", and money so deposited in that fund is
13 appropriated to the commission for the purpose of carrying out
14 the provisions of [~~Chapter 61, Article 29~~] Section 61-29-4 NMSA
15 1978 or to maintain the real estate recovery fund as required
16 by the Real Estate Recovery Fund Act and shall be paid out of
17 the fund upon the vouchers of the executive secretary of the
18 commission or his designee; provided that the total fees and
19 charges collected and paid into the state treasury and any
20 money so deposited shall be expended only for the purposes
21 authorized by Chapter 61, Article 29 NMSA 1978.

22 [~~D. The commission shall by rule provide for a~~
23 ~~proportionate refund of the license issuance fee or the license~~
24 ~~renewal fee if the license is issued or renewed for a period of~~
25 ~~three years pursuant to Section 61-29-11 NMSA 1978 and is~~

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1 ~~terminated with more than one year remaining.]"~~

2 Section 9. Section 61-29-9 NMSA 1978 (being Laws 1959,
3 Chapter 226, Section 8, as amended by Laws 2003, Chapter 22,
4 Section 4 and by Laws 2003, Chapter 329, Section 1) is amended
5 to read:

6 "61-29-9. QUALIFICATIONS FOR LICENSE.--

7 A. Licenses shall be granted only to persons who
8 meet the requirements for licensure prescribed by the
9 commission and are deemed by the commission to be of good
10 repute and competent to transact the business of a [~~real estate~~
11 ~~broker or salesperson~~] qualifying broker or an associate broker
12 in a manner that safeguards the interests of the public.

13 B. An applicant for a qualifying broker's license
14 or an associate broker's license shall be a legal resident of
15 the United States and have reached the age of majority. Each
16 applicant for a qualifying broker's license or an associate
17 broker's license shall have passed the real estate examination
18 approved by the commission and shall:

19 [~~(1) have performed actively as a real estate~~
20 ~~salesperson for at least twenty-four months out of the~~
21 ~~preceding thirty-six months immediately prior to filing~~
22 ~~application and furnish the commission a certificate that he~~
23 ~~has completed successfully a broker basics course approved by~~
24 ~~the commission;~~

25 ~~(2)] (1) furnish the commission with a~~

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1 certificate that ~~[he]~~ the applicant has completed successfully
2 ~~[one hundred eighty]~~ one hundred twenty classroom hours of
3 instruction in basic real estate courses approved by the
4 commission, thirty hours of which shall have been a broker
5 basics course;

6 ~~[(3)]~~ (2) furnish the commission with a
7 certificate that ~~[he]~~ the applicant is a duly licensed real
8 estate broker in good standing in another state; ~~[providing he]~~
9 provided that the applicant has successfully completed
10 ~~[successfully]~~ ninety classroom hours of instruction in basic
11 real estate courses approved by the commission, thirty hours of
12 which shall have been a broker basics course; or

13 ~~[(4)]~~ (3) furnish the commission with
14 satisfactory proof of ~~[his]~~ equivalent experience in an
15 activity closely related to or associated with real estate and
16 furnish the commission with a certificate that ~~[he]~~ the
17 applicant has completed successfully ninety classroom hours of
18 instruction in basic real estate courses approved by the
19 commission, thirty hours of which shall have been a broker
20 basics course. ~~[or~~

21 ~~(5) an applicant for a qualifying broker's~~
22 ~~license shall have been actively engaged in the real estate~~
23 ~~business as an associate broker or salesperson for at least two~~
24 ~~years and furnish the commission a certificate that he has~~
25 ~~completed successfully a broker basics course approved by the~~

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1 ~~commission.~~

2 ~~G. Each applicant for a real estate salesperson's~~
3 ~~license shall be a legal resident of the United States, have~~
4 ~~reached the age of majority, have passed the real estate~~
5 ~~examination approved by the commission and furnish the~~
6 ~~commission a certificate that he has completed successfully~~
7 ~~sixty classroom hours of instruction in basic real estate~~
8 ~~courses approved by the commission.]~~

9 C. An applicant for a qualifying broker's license
10 shall have been actively engaged in the real estate business as
11 an associate broker or real estate salesperson for at least two
12 of the last five years immediately preceding application for a
13 qualifying broker's license and furnish the commission proof
14 that the applicant has completed successfully a broker basics
15 course approved by the commission.

16 D. A licensee holding a current real estate
17 salesperson's license on January 1, 2006 may qualify for an
18 associate broker's license. A real estate salesperson
19 obtaining an associate broker's license pursuant to this
20 paragraph must pass a real estate broker's examination approved
21 by the commission to be eligible to apply for a qualifying
22 broker's license.

23 ~~[D.]~~ E. The commission shall require the
24 information it deems necessary from every applicant to
25 determine [his] that applicant's honesty, trustworthiness and

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1 competency. Corporations, partnerships or associations may
2 hold a qualifying broker's license issued in the name of the
3 corporation, partnership or association; provided that at least
4 one member of the partnership or association or one officer or
5 employee of a corporation who actively engages in the real
6 estate business first secures a qualifying broker's license.
7 The license shall be issued in the name of the corporation,
8 partnership or association, naming the partner, associate,
9 officer or employee as qualifying broker for the corporation,
10 partnership or association."

11 Section 10. Section 61-29-10 NMSA 1978 (being Laws 1959,
12 Chapter 226, Section 9, as amended) is amended to read:

13 "61-29-10. APPLICATION FOR LICENSE AND EXAMINATION.--

14 A. All applications for licenses to act as [~~real~~
15 ~~estate brokers and real estate salespersons~~] qualifying brokers
16 and associate brokers shall be made in writing to the
17 commission and shall contain such data and information as may
18 be required upon a form to be prescribed and furnished by the
19 commission. The application shall be accompanied by:

20 (1) the recommendation of two reputable
21 citizens who own real estate in the county in which the
22 applicant resides, which recommendation shall certify that the
23 applicant is of good moral character, honest and trustworthy;
24 and

25 (2) the triennial license fee prescribed by

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1 the commission.

2 B. In addition to proof of honesty, trustworthiness
3 and good reputation, an applicant shall pass [~~satisfactorily~~] a
4 written examination approved by the commission. The
5 examination shall be given at the time and places within the
6 state as the commission shall prescribe; however, the
7 examination shall be given not less than two times during each
8 calendar year. The examination shall include business ethics,
9 writing, composition, arithmetic, elementary principles of land
10 economics and appraisals, a general knowledge of the statutes
11 of this state relating to deeds, mortgages, contracts of sale,
12 agency and brokerage and the provisions of Chapter 61, Article
13 29 NMSA 1978.

14 C. [~~No~~] An applicant is not permitted to engage in
15 the real estate business until [~~he~~] the applicant has
16 [~~satisfactorily~~] passed the approved examination, complied with
17 the other requirements of Chapter 61, Article 29 NMSA 1978, and
18 until a license has been issued to [~~him~~] the applicant.

19 D. Notice of passing or failing to pass the
20 examination shall be given [~~by the commission~~] to an applicant
21 not later than three weeks following the date of the
22 examination.

23 E. The commission may establish educational
24 programs and procure qualified personnel, facilities and
25 materials for the instruction of persons desiring to become

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1 qualifying brokers or associate brokers [~~or salespersons~~] or
2 desiring to improve their proficiency as qualifying brokers or
3 associate brokers [~~or salespersons~~]. The commission may
4 inspect and accredit educational programs and courses of study
5 and may establish standards of accreditation for educational
6 programs conducted in this state. The expenses incurred by the
7 commission in activities authorized pursuant to this subsection
8 shall not exceed the total revenues received and accumulated by
9 the commission."

10 Section 11. Section 61-29-10.2 NMSA 1978 (being Laws
11 1999, Chapter 127, Section 3, as amended) is amended to read:

12 "61-29-10.2. LICENSEE'S DUTIES--DISCLOSURE.--

13 A. [A] Prior to the time a licensee generates or
14 presents any written document that has the potential to become
15 an express written agreement, the licensee shall give to a
16 prospective buyer, seller, landlord or tenant [~~at the time when~~
17 ~~the parties enter into an express written agreement~~] a list of
18 the licensee's duties that are in accordance with requirements
19 established by the commission.

20 B. Licensees shall perform all duties that are
21 established for licensees by the commission."

22 Section 12. Section 61-29-11 NMSA 1978 (being Laws 1959,
23 Chapter 226, Section 10, as amended) is amended to read:

24 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF
25 LICENSES.--

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1 A. The commission shall issue to each qualified
2 applicant a license in the form and size prescribed by the
3 commission.

4 B. The license shall show the name and address of
5 the licensee. [~~A real estate salesperson's~~] An associate
6 broker's license shall show the name of the qualifying broker
7 by whom [~~he~~] the associate broker is engaged. [~~The license of~~
8 ~~the real estate salesperson shall be delivered or mailed to the~~
9 ~~broker by whom the real estate salesperson is engaged and shall~~
10 ~~be kept in the custody and control of that broker.~~] The
11 commission shall deliver or mail the license of the associate
12 broker to the qualifying broker by whom the associate broker is
13 engaged, and the qualifying broker shall display the license at
14 the brokerage from which the associate broker will be
15 conducting real estate business on behalf of the brokerage.
16 The license of the associate broker shall remain in the custody
17 and control of the qualifying broker as long as the associate
18 broker is engaged by that qualifying broker.

19 C. Every license shall be renewed every three years
20 on or before the last day of the month following the licensee's
21 month of birth. Upon written request for renewal by the
22 licensee, the commission shall certify renewal of a license if
23 there is no reason or condition that might warrant the refusal
24 of the renewal of a license. The licensee shall provide proof
25 of compliance with continuing education requirements and pay

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1 the renewal fee. If a licensee has not made application for
2 renewal of license, furnished proof of compliance with
3 continuing education requirements and paid the renewal fee by
4 the license renewal date, the license shall expire. The
5 commission may require a person whose license has expired to
6 apply for a license as if [~~he~~] the person had not been
7 previously licensed under Chapter 61, Article 29 NMSA 1978 and
8 further require that [~~he~~] the person be reexamined. The
9 commission shall require a person whose license has expired to
10 pay when [~~he~~] the person applies for a license, in addition to
11 any other fee, a late fee. If during a period of one year from
12 the date the license expires the person or [~~his~~] the person's
13 spouse is either absent from this state on active duty military
14 service or the person is suffering from an illness or injury of
15 such severity that the person is physically or mentally
16 incapable of making application for a license, payment of the
17 late fee and reexamination shall not be required by the
18 commission if, within three months of the person's permanent
19 return to this state or sufficient recovery from illness or
20 injury to allow the person to make an application, the person
21 makes application to the commission for a license. A copy of
22 that person's or [~~his~~] that person's spouse's military orders
23 or a certificate from the applicant's physician shall accompany
24 the application. A person excused by reason of active duty
25 military service, illness or injury as provided for in this

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1 subsection may make application for a license without
2 imposition of the late fee. All fees collected pursuant to
3 this subsection shall be disposed of in accordance with the
4 provisions of Section 61-29-8 NMSA 1978. The revocation of a
5 qualifying broker's license automatically suspends every [~~real~~
6 ~~estate salesperson's~~] associate broker's license granted to any
7 person by virtue of association with the qualifying broker
8 whose license has been revoked, pending a change of qualifying
9 broker. Upon the naming of a new qualifying broker, the
10 suspended license shall be reactivated without charge if
11 granted during the three-year renewal cycle.

12 D. [~~Each resident licensed~~] A qualifying broker
13 shall [~~maintain within this state a fixed office that conforms~~
14 ~~with local regulations~~] conduct brokerage business under the
15 trade name and from the brokerage address registered with the
16 commission. Every [~~office operated by a licensed broker~~]
17 brokerage shall have a [~~licensed~~] qualifying broker in charge
18 [~~who is a natural person~~]. The license of the qualifying
19 broker and each [~~real estate salesperson~~] associate broker
20 associated with that qualifying broker shall be prominently
21 displayed in [~~the~~] each brokerage office. The address of the
22 office shall be designated in the qualifying broker's license,
23 and [~~no~~] a license issued shall not authorize the licensee to
24 transact real estate business at any other address. In case of
25 removal from the designated address, the licensee shall make

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1 application to the commission before the removal or within ten
2 days thereafter, designating the new location of [~~his~~] the
3 licensee's office and paying the required fee, whereupon the
4 commission shall issue a license for the new location if the
5 new location complies with the terms of Chapter 61, Article 29
6 NMSA 1978. A [~~licensed~~] qualifying broker shall maintain a
7 sign [~~on his~~] at the brokerage office of such size and content
8 as the commission prescribes. [~~In making application for a~~
9 ~~license or for a change of address, the licensee shall verify~~
10 ~~that his office conforms with local regulations.~~]

11 E. When [~~a real estate salesperson~~] an associate
12 broker is discharged or terminates [~~his~~] association or
13 employment with the qualifying broker with whom [~~he~~] the
14 associate broker is associated, [~~it is the duty of that~~] the
15 qualifying broker [~~to~~] shall deliver or mail [~~to the commission~~
16 ~~that real estate salesperson's~~] the associate broker's license
17 to the commission within forty-eight hours. The commission
18 shall hold the license on inactive status. It is unlawful for
19 [~~a real estate salesperson~~] an associate broker to perform any
20 of the acts authorized by Chapter 61, Article 29 NMSA 1978
21 either directly or indirectly under authority of an inactive
22 license after [~~his~~] the associate broker's association with a
23 qualifying broker has been terminated and [~~his~~] the associate
24 broker's license [~~as salesperson~~] has been returned to the
25 commission [~~as provided in that article~~] until the appropriate

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1 fee has been paid and the license has been reissued and
2 reactivated by the commission."

3 Section 13. Section 61-29-12 NMSA 1978 (being Laws 1959,
4 Chapter 226, Section 11, as amended) is amended to read:

5 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE
6 FOR CAUSES ENUMERATED.--

7 A. The commission may refuse to issue a license or
8 may suspend or revoke a license if the applicant or licensee
9 has by false or fraudulent representations obtained a license
10 or, in performing or attempting to perform any of the actions
11 specified in Chapter 61, Article 29 NMSA 1978, an applicant or
12 licensee has:

13 (1) made a substantial misrepresentation;
14 (2) pursued a continued and flagrant course of
15 misrepresentation; made false promises through agents,
16 salespersons, advertising or otherwise; or used any trade name
17 or insignia of membership in any real estate organization of
18 which the licensee is not a member;

19 (3) paid or received a rebate, profit,
20 compensation or commission to or from any unlicensed person,
21 except [~~his~~] the licensee's principal or other party to the
22 transaction, and then only with [~~his~~] that principal's written
23 consent;

24 (4) represented or attempted to represent a
25 qualifying broker other than a qualifying broker with whom [~~he~~]

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1 the licensee is associated without the express knowledge and
2 consent of that qualifying broker;

3 (5) failed, within a reasonable time, to
4 account for or to remit any money coming into [~~his~~] the
5 licensee's possession that belongs to others, commingled funds
6 of others with [~~his~~] the licensee's own or failed to keep funds
7 of others in an escrow or trustee account or failed to furnish
8 legible copies of all listing and sales contracts to all
9 parties executing them;

10 (6) been convicted in any court of competent
11 jurisdiction of a felony or any offense involving moral
12 turpitude;

13 (7) employed or compensated directly or
14 indirectly a person for performing any of the acts regulated by
15 Chapter 61, Article 29 NMSA 1978 who is not a licensed
16 qualifying broker or an associate broker [~~or licensed~~
17 ~~salesperson~~]; provided, however, that a [~~licensed~~] qualifying
18 broker may pay a commission to a [~~licensed~~] qualifying broker
19 of another state; provided further that the nonresident broker
20 shall not conduct in this state any of the negotiations for
21 which a fee, compensation or commission is paid except in
22 cooperation with a licensed qualifying broker of this state;

23 (8) failed, if a qualifying broker, to place
24 as soon after receipt as is practicably possible, after
25 securing signatures of all parties to the transaction, any

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1 deposit money or other money received by [~~him~~] the qualifying
2 broker in a real estate transaction in a custodial, trust or
3 escrow account, maintained by [~~him~~] the qualifying broker in a
4 bank or savings and loan institution or title company
5 authorized to do business in this state, in which the funds
6 shall be kept until the transaction is consummated or otherwise
7 terminated, at which time a full accounting of the funds shall
8 be made by the qualifying broker. Records relative to the
9 deposit, maintenance and withdrawal of the funds shall contain
10 information as may be prescribed by the rules of the
11 commission. Nothing in this paragraph prohibits a qualifying
12 broker from depositing nontrust funds in an amount not to
13 exceed the required minimum balance in each trust account so as
14 to meet the minimum balance requirements of the bank necessary
15 to maintain the account and avoid charges. The minimum balance
16 deposit shall not be considered commingling and shall not be
17 subject to levy, attachment or garnishment. This paragraph
18 does not prohibit a qualifying broker from depositing any
19 deposit money or other money received by [~~him~~] the qualifying
20 broker in a real estate transaction with another cooperating
21 broker who shall in turn comply with this paragraph;

22 (9) failed, if [~~a salesperson~~] an associate
23 broker, to place as soon after receipt as is practicably
24 possible in the custody of [~~his~~] the associate broker's
25 qualifying broker, after securing signatures of all parties to

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1 the transaction, any deposit money or other money entrusted to
2 [~~him~~] the associate broker by any person dealing with [~~him~~] the
3 associate broker as the representative of [~~his~~] the qualifying
4 broker;

5 (10) violated a provision of Chapter 61,
6 Article 29 NMSA 1978 or a rule promulgated by the commission;

7 (11) committed an act, whether of the same or
8 different character from that specified in this subsection,
9 that is related to dealings as a qualifying broker or an
10 associate broker [~~or real estate salesperson~~] and that
11 constitutes or demonstrates bad faith, incompetency,
12 untrustworthiness, impropriety, fraud, dishonesty, negligence
13 or any unlawful act; or

14 (12) been the subject of disciplinary action
15 as a licensee while licensed to practice real estate in another
16 jurisdiction, territory or possession of the United States or
17 another country.

18 B. An unlawful act or violation of Chapter 61,
19 Article 29 NMSA 1978 by [~~a real estate salesperson~~] an
20 associate broker, employee, partner or associate of a
21 [~~licensed~~] qualifying broker shall not be cause for the
22 revocation of a license of the qualifying broker unless it
23 appears to the satisfaction of the commission that the
24 qualifying broker had guilty knowledge of the unlawful act or
25 violation."

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1 Section 14. A new section of Chapter 61, Article 29 NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] NONRESIDENT LICENSEES--CONSENT TO
4 SERVICE.--A nonresident associate broker or qualifying broker
5 shall file with the commission an irrevocable consent that
6 lawsuits and actions may be commenced against the nonresident
7 associate broker or qualifying broker in the proper court of
8 any county of this state in which a cause of action may arise
9 or in which the plaintiff may reside, by service on the
10 commission of any process or pleadings authorized by the laws
11 of this state, the consent stipulating and agreeing that such
12 service of process or pleadings on the commission is as valid
13 and binding as if personal service had been made upon the
14 nonresident licensee in New Mexico. The instrument containing
15 the consent shall be acknowledged and, if executed on behalf of
16 a corporation or association, shall be accompanied by a
17 certified copy of the resolution of the proper officers or
18 managing board authorizing the executing officer to execute the
19 instrument. Service of process or pleadings shall be served in
20 duplicate upon the commission; one shall be filed in the office
21 of the commission and the other immediately forwarded by
22 certified mail to the main office of the nonresident licensee
23 against whom the process or pleadings are directed."

24 Section 15. Section 61-29-16 NMSA 1978 (being Laws 1959,
25 Chapter 226, Section 15) is amended to read:

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1 "61-29-16. SUIT BY QUALIFYING OR ASSOCIATE BROKER [~~OR~~
2 ~~SALESMAN~~].--No action for the collection of a commission or
3 compensation earned by any person as a [~~real estate broker or~~
4 ~~salesman~~] qualifying broker or an associate broker required to
5 be licensed under the provisions of [~~this act~~] Chapter 61,
6 Article 29 NMSA 1978 shall be maintained in the courts of the
7 state unless such person was a duly licensed qualifying broker
8 or associate broker [~~or salesman~~] at the time the alleged cause
9 of action arose. In any event, suit against a member of the
10 public as distinguished from any person licensed under [~~this~~
11 ~~act~~] Chapter 61, Article 29 NMSA 1978 shall be maintained only
12 in the name of the qualifying broker."

13 Section 16. Section 61-29-18 NMSA 1978 (being Laws 1959,
14 Chapter 226, Section 18) is amended to read:

15 "61-29-18. INTEPRETATION OF ACT.--Nothing [~~in this act~~]
16 contained in Chapter 61, Article 29 NMSA 1978 shall affect the
17 power of cities and villages to tax, license and regulate [~~real~~
18 ~~estate~~] qualifying brokers or associate brokers. The
19 requirements hereof shall be in addition to the requirements of
20 an existing or future ordinance of any city or village so
21 taxing, licensing or regulating [~~real estate~~] qualifying
22 brokers or associate brokers."

23 Section 17. Section 61-29-23 NMSA 1978 (being Laws 1980,
24 Chapter 82, Section 4, as amended) is amended to read:

25 "61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE

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1 BROKER [~~OR SALESPERSON~~]-PETITION--REQUIREMENTS--RECOVERY
2 LIMITATIONS.--

3 A. When any aggrieved person claims a pecuniary
4 loss caused by a state-licensed [~~real estate broker or~~
5 ~~salesperson~~] qualifying broker or associate broker based upon
6 fraud, knowing or willful misrepresentation or wrongful
7 conversion of funds entrusted to [~~him~~] the qualifying broker or
8 associate broker, which loss arose out of any transaction for
9 which a [~~real estate broker's or salesperson's~~] qualifying
10 broker's or an associate broker's license is required and arose
11 out of or during the course of a transaction involving the
12 sale, lease, exchange or other disposition of real estate,
13 where the cause of action arose on or after July 1, 1980, that
14 person may, within one year after obtaining a final judgment
15 based upon fraud, knowing or willful misrepresentation or
16 wrongful conversion of funds entrusted to [~~him~~] the qualifying
17 broker or associate broker and the termination of all
18 proceedings, including appeals in connection with the judgment,
19 file a verified petition with the commission for payment from
20 the real estate recovery fund for the actual damages included
21 in the judgment and unpaid, but not more than ten thousand
22 dollars (\$10,000) per judgment regardless of the number of
23 persons aggrieved or parcels of real estate involved in the
24 transaction. The aggregate amount recoverable by all claimants
25 for losses caused by any one licensee shall not exceed thirty

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1 thousand dollars (\$30,000).

2 B. A copy of the petition shall be served upon the
3 commission in the manner provided by law for service of a civil
4 summons.

5 C. The commission shall conduct a hearing on the
6 petition after service of the petition upon the commission. At
7 the hearing, the petitioner shall be required to show that ~~he~~
8 the petitioner:

9 (1) is not the spouse of the judgment debtor,
10 the personal representative of the spouse or related to the
11 third degree of consanguinity or affinity to the licensee whose
12 conduct is alleged to have caused the loss;

13 (2) has complied with all the requirements of
14 the Real Estate Recovery Fund Act;

15 (3) has obtained a judgment of the kind
16 described in Subsection A of this section, the amount awarded
17 and the amount owing at the date of the petition;

18 (4) has had execution issued upon the judgment
19 and that the officer executing the writ has made a return
20 showing that the judgment debtor has no property within the
21 state subject to execution. If execution is levied against the
22 property of the judgment debtor, the petitioner ~~must~~ shall
23 show that the amount realized on the sale was insufficient to
24 satisfy the judgment and ~~must~~ shall set forth the amount
25 realized from the sale and the balance remaining due on the

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1 judgment after application of the amount realized;

2 (5) has made reasonable searches and inquiries
3 to ascertain whether the judgment debtor is possessed of real
4 or personal property or other assets liable to be sold or
5 applied in satisfaction of the judgment, including partnership
6 assets, licensee's estate or any bond or insurance, and that
7 [he] the petitioner has exercised reasonable diligence to
8 secure payment of the judgment from the assets of the judgment
9 debtor; and

10 (6) has a judgment that is not:

11 (a) covered by any bond, insurance,
12 surety agreement or indemnity agreement;

13 (b) a loss incurred by a partner, joint
14 venturer, employer, employee or associate of the licensee whose
15 conduct is alleged to have caused the loss; or a corporate
16 officer or director of a corporation in which the judgment
17 debtor is also an officer, director or employee; or

18 (c) a loss incurred by any business or
19 other entity in which the licensee whose conduct is alleged to
20 have caused the loss has any interest at the time of the
21 conduct alleged to have caused the loss."

22 Section 18. Section 61-29-27 NMSA 1978 (being Laws 1980,
23 Chapter 82, Section 8, as amended) is amended to read:

24 "61-29-27. SUBROGATION.--When the commission makes any
25 payment from the real estate recovery fund to a judgment

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1 creditor, the commission shall be subrogated to all rights of
2 the judgment creditor for the amounts paid out of the fund and
3 any amount and interest so recovered by the commission shall be
4 deposited in the fund. The commission may, pursuant to the
5 provisions of the Uniform Licensing Act, revoke, suspend or
6 refuse to renew the license of any [~~real estate~~] qualifying
7 broker or associate broker [~~or salesperson~~] for whom payment
8 from the fund has been made in accordance with the provisions
9 of the Real Estate Recovery Fund Act. Further, the [~~commission~~]
10 commission may refuse to issue or renew the license of any
11 person for whom payment from the real estate recovery fund has
12 been made, until that person reimburses the fund for all
13 payments made on [~~his~~] that person's behalf."

14 Section 19. A new section of Chapter 61, Article 29 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] REAL ESTATE EDUCATION AND TRAINING FUND
17 CREATED--PURPOSE--APPROPRIATION.--

18 A. The "real estate education and training fund" is
19 created in the state treasury. The fund shall consist of an
20 initial transfer of the balance in the real estate recovery
21 fund as provided in Subsection C of this section; legislative
22 appropriations to the fund; fees charged by the commission for
23 approval of real estate education sponsors, courses and
24 instructors; gifts, grants, donations and bequests to the fund;
25 and income from investment of the fund. Money in the fund

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1 shall not revert to any other fund at the end of a fiscal year.

2 B. The fund shall be administered by the
3 commission, and money in the fund is subject to appropriation
4 by the legislature to the commission to improve real estate
5 education and to train real estate instructors.

6 C. Notwithstanding the provisions of Sections
7 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance
8 in excess of two hundred fifty thousand dollars (\$250,000) in
9 the real estate recovery fund shall be transferred to the real
10 estate education and training fund."

11 Section 20. EFFECTIVE DATE.--

12 A. The effective date of the provisions of Sections
13 1 through 18 of this act is January 1, 2006.

14 B. The effective date of the provisions of Section
15 19 of this act is July 1, 2005.

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